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SERVICE DATE - FEBRUARY 20, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB- 277 (Sub-No. 1X)

WEST VIRGINIA NORTHERN RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN PRESTON COUNTY, WV

Decided: February 15, 2001

West Virginia Northern Railroad Company (WVN) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon its entire line of railroad between milepost 0.0 in Tunnelton and the end of the line at milepost 10.13 near Kingwood, in Preston County, WV, a distance of 10.13 miles. Notice of the exemption was served and published in the Federal Register on December 21, 2000 (65 FR 80483-84). The exemption became effective on January 20, 2001.¹

On February 6, 2001, Kern Valley Railroad Company (KVR) late-filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with WVN for acquisition of the right-of-way for use as a trail.² KVR submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By reply filed February 13, 2001, WVN indicated its willingness to negotiate with KVR for interim trail use.

¹ By decision served January 18, 2001, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition WVN retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act.

² The December 21 notice provided that trail use/rail banking requests had to be filed no later than January 2, 2001. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that KVR's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way³ and the carrier is willing to enter into negotiations. Inasmuch as WVN has not consummated the abandonment and is willing to negotiate with KVR for the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision or until August 19, 2001. If no agreement is reached within 180 days, WVN may fully abandon the line, provided that the environmental conditions imposed in the decision served January 18, 2001, are met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption published in the Federal Register on December 21, 2000, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (until August 19, 2001), subject to the environmental conditions imposed in the January 18, 2001 decision.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

³ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

6. If an agreement for interim trail use/rail banking is reached by August 19, 2001, interim trail use may be implemented. If no agreement is reached by that time, WVN may fully abandon the line.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary